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**7. Negligence (§ 98\*)—Contributory Negligence—Comparative Negligence.**—Where it appears that the negligence of a servant has contributed as an efficient cause to the injury of which he complains, the court will not undertake to balance the negligence of the respective parties.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 93, 165, Dec. Dig. § 98.\* 10 Va.-W. Va. Enc. Dig. 383; 14 Va.-W. Va. Enc. Dig. 768; 15 Va.-W. Va. Enc. Dig. 724.]

Error to Circuit Court, Shenandoah County.

Action by Affleck's Administrator against the Powhatan Lime Company. Judgment for plaintiff, and defendant brings writ of error. Reversed.

*Marshall McCormick*, of Berryville, *P. H. C. Cabell*, of Richmond, and *M. L. Walton*, of Woodstock, for plaintiff in error.

*Tavenner & Bauserman*, of Woodstock, and *C. B. Guyer*, of Strasburg, for defendant in error.

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STARKE v. STORM'S EX'R.

Nov. 20, 1913.

[79 S. E. 1057.]

**1. Pleading (§ 245\*)—Amendment—Subject-Matter.**—Where the matter of amendment to a bill is similar to that contained in a bill and was either known to complaintant or might well have been known to him prior to the argument of the demurrer to his original bill, but was not brought forward until the demurrer was sustained on a ground involving dismissal of the bill, the court properly refused to allow it to be filed.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 635, 653-675; Dec. Dig. § 245.\* 1 Va.-W. Va. Enc. Dig. 321; 14 Va.-W. Va. Enc. Dig. 44; 15 Va.-W. Va. Enc. Dig. 41.]

**2. Master and Servant (§ 1\*)—Creation of Relation—Implied Contract.**—Where plaintiff at the age of 13 applied for the position of servant to deceased, who accepted him, and took him into his home and furnished him with shelter, food, and clothing, in return for small personal services, but there was no contract, express or implied, to pay plaintiff any money consideration for his services, no other relation than that of master and servant existed between the parties.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1; Dec. Dig. § 1.\* 9 Va.-W. Va. Enc. Dig. 662; 14 Va.-W. Va. Enc. Dig. 683.]

**3. Master and Servant (§ 80\*)—Right to Wages—Presumption.**—In such case the services were not rendered with the master's assent

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

under such circumstances as raised a presumption that the infant plaintiff expected to be paid or the master to pay.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 107-127; Dec. Dig. § 80.\* 9 Va.-W. Va. Enc. Dig. 663.]

**4. Master and Servant (§ 76\*)—Services and Compensation—Master's Obligation.**—In such case there was an implied obligation to feed, clothe, and lodge the infant servant.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 105, 106; Dec. Dig. § 76.\* 9 Va.-W. Va. Enc. Dig. 663.]

**5. Infants (§ 50\*)—Contract—Necessaries.**—Such contract by the infant servant was a contract for necessities, such as food, clothing, and lodging, which he had the right to make.

[Ed. Note.—For other cases, see Infants, Cent. Dig. §§ 8, 58-61; Dec. Dig. § 50.\* 7 Va.-W. Va. Enc. Dig. 468; 14 Va.-W. Va. Enc. Dig. 535.]

**6. Guardian and Ward (§ 6\*)—"Guardian De Facto"—"Guardian De Son Tort."**—In such case, where the master did not take possession of any property belonging to the infant servant or agree to pay any wages for his services, the master did not become a "guardian de facto or de son tort," who is purely a creature of a court of equity and is one who takes possession of an infant's property without right or lawful authority and is required to account therefor.

[Ed. Note.—For other cases, see Guardian and Ward, Cent. Dig. § 7; Dec. Dig. § 6.\* 6 Va.-W. Va. Enc. Dig. 844; 14 Va.-W. Va. Enc. Dig. 503; 15 Va.-W. Va. Enc. Dig. 452.]

**7. Master and Servant (§ 76\*)—Master's Obligation—Education of Infant Servant.**—In such case, where the infant servant was under no restraint and could have left at any time, there was no implied obligation that the master should have him educated.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 105, 106; Dec. Dig. § 76.\* 9 Va.-W. Va. Enc. Dig. 661.]

**8. Equity (§ 48\*)—Grounds of Defense—Remedy at Law.**—Where an infant servant, after leaving the master's service, returned at the request of the master, who promised to pay him \$400 a year, any wages due the complainant for such services were recoverable by action at law, so that he could not file a bill asking that a court of equity award him such amount.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 156, 158; Dec. Dig. § 48.\* 1 Va.-W. Va. Enc. Dig. 162; 14 Va.-W. Va. Enc. Dig. 12; 15 Va.-W. Va. Enc. Dig. 15.]

Appeal from Circuit Court, Albemarle County.

Bill by W. F. Starke against Edward H. Storm's executor. From a decree dismissing the bill, complainant appeals. Affirmed.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

*Gumer & Gilmer*, of Charlottesville, for appellant.

*Hanckel & Hanckel* and *Perkins & Perkins*, all of Charlottesville, for appellee.

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GENERAL BOARD OF STATE HOSPITALS FOR THE IN-  
SANE *v.* ROBERTSON.

Nov. 20, 1913.

[79 S. E. 1064.]

**1. Insane Persons (§ 93\*)—Right of Action—Guardian.**—Under Code 1904, §§ 1697, 1702, declaring that the committee of an insane person shall be entitled to his custody and control, shall take possession of and manage his estate, and may sue and be sued in respect thereto, the committee of an insane person committed to a hospital for care, maintenance, and treatment, who is a beneficiary of a trust fund held and administered by the hospital, may maintain a suit to enforce the trust and protect the property against misappropriation.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. § 163; Dec. Dig. § 93.\* 7 Va.-W. Va. Enc. Dig. 695; 14 Va.-W. Va. Enc. Dig. 560; 15 Va.-W. Va. Enc. Dig. 506.]

**2. States (§ 191\*)—Suits against—Consent to Be Sued.**—A suit against a state hospital for the insane in its public governmental capacity is a suit against the state which cannot be maintained by an individual unless the state waives its immunity and submits itself to the jurisdiction of the courts.

[Ed. Note.—For other cases, see *States*, Cent. Dig. §§ 179-184; Dec. Dig. § 191.\* 12 Va.-W. Va. Enc. Dig. 738; 14 Va.-W. Va. Enc. Dig. 515; 15 Va.-W. Va. Enc. Dig. 920.]

**3. States (§ 191\*)—Suits against—Hospital for Insane—Enforcement of Trust.**—A state hospital for the insane, which in its private capacity has accepted a testamentary trust, stands upon the same footing with respect to it as any other trustee, and is suable by a beneficiary.

[Ed. Note.—For other cases, see *States*, Cent. Dig. §§ 179-184; Dec. Dig. § 191.\* 12 Va.-W. Va. Enc. Dig. 738; 14 Va.-W. Va. Enc. Dig. 515; 15 Va.-W. Va. Enc. Dig. 920.]

**4. States (§ 87\*)—Property of State Institutions—Control by State.**—As to property held by public corporations for public purposes the power of the Legislature is supreme, but, while it may prohibit such corporations from accepting property as trustee under a private grant, yet when the trust has once been accepted it cannot divert it to purposes other than that of the trust.

[Ed. Note.—For other cases, see *States*, Dec. Dig. § 87.\* 3 Va.-

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.